



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1283]

Certain Composite Baseball and Softball Bats and Components Thereof; Notice of a Commission Issuance of a Limited Exclusion Order and a Cease and Desist Order Against a Defaulting Respondent; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order (“LEO”) against infringing products manufactured and/or imported by or on behalf of Proton Sports Inc. (“Proton”) of Scottsdale, Arizona, and a cease and desist order (“CDO”) against Proton. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“EDIS”) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 2, 2021, based on a complaint filed and supplemented by Easton Diamond Sports, LLC (“Easton”) of Thousand Oaks, California. 86 FR 60468-469 (Nov. 2, 2021). The complaint alleges a violation of section 337 of the Tariff Act, as amended, 19 U.S.C. 1337, based on the importation, sale for importation, or sale in the United States after importation of certain composite baseball and softball bats and components thereof by reason of infringement of one or more asserted claims of U.S. Patent No. 6,997,826 (“the ’826 patent”). *Id.* The complaint further alleges the existence of a domestic industry. *Id.* The Commission’s notice of investigation (“NOI”) names Proton; Juno Athletics LLC (“Juno”) of Aventura, Florida; and

Monsta Athletics LLC (“Monsta”) of Calimesa, California as respondents. *Id.* at 60469. The Office of Unfair Import Investigations is not a party to this investigation. *Id.*

On January 25, 2022, the Commission amended the complaint and NOI to add TianChang Zhengmu Aluminum Technology Co., Ltd. (“TZA”) of Tianching City, China as a respondent. *See* Order No. 8 (Dec. 28, 2021), *unreviewed by* Comm’n Notice (Jan. 25, 2022). On February 16, 2022, the Commission terminated TZA from the investigation based on withdrawal of the complaint. *See* Order No. 11 (Jan. 28, 2022), *unreviewed by* Comm’n Notice (Feb. 16, 2022).

On April 12, 2022, the Commission found Proton in default for failure to respond to the complaint and NOI and for failure to respond to these order to show cause why it should not be found in default for failing to respond to the complaint and NOI (Order No. 7). *See* Order No. 13 (March 30, 2022), *unreviewed by* Comm’n Notice (April 12, 2022).

On July 25, 2022, the Commission terminated respondent Monsta from the investigation based on withdrawal of the complaint. *See* Order No. 21 (June 27, 2022), *unreviewed by* Comm’n Notice (July 25, 2022).

On July 11, 2022, the currently presiding ALJ issued Order No. 23, which terminated the investigation as to the last participating respondent, Juno, based on a settlement agreement. Easton did not request issuance of a general exclusion order. The Commission determined not to review Order No. 23 and requested written submissions on the issues of remedy, the public interest, and bonding with respect to Proton. 87 FR 48690-91 (Aug. 10, 2022).

On August 26, 2022, Easton submitted briefing responsive to the Commission’s request. Easton argued that the Commission should issue an LEO directed to Proton’s infringing products and a CDO directed to Proton. No other submissions were received.

When the conditions in section 337(g)(1)(A)–(E) (19 U.S.C. 1337(g)(1)(A)–(E)) have been satisfied, section 337(g)(1) and Commission Rule 210.16(c) (19 CFR 210.16(c)) direct the Commission, upon request, to issue a limited exclusion order or a cease and desist order or both

against a respondent found in default, based on the allegations regarding a violation of section 337 in the Complaint, which are presumed to be true, unless after consideration of the public interest factors in section 337(g)(1), it finds that such relief should not issue.

Having reviewed the record in the investigation, including written submissions from Easton, the Commission has determined pursuant to section 337(g)(1) that the appropriate remedy in this investigation is an LEO directed to the defaulting respondent prohibiting the unlicensed entry of composite baseball and softball bats and components thereof that infringe one or more of claims 1-5, 9-12, 14-15, and 18-19 of the '826 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of Proton, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns.

The Commission has also determined to issue a CDO prohibiting Proton from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for composite baseball and softball bats and components thereof that infringe one or more of claims 1-5, 9-12, 14-15, and 18-19 of the '826 patent.

The Commission has further determined that the public interest factors enumerated in section 337(g)(1) do not preclude issuance of the LEO or CDO. Finally, the Commission has determined that a bond in the amount of 100 percent of the entered value of the covered products is required during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission voted to approve this determination on November 1, 2022.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 1, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

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